

REMARKS

Reconsideration and allowance of the subject application are respectfully requested.

We first thank the Examiner for the courtesies he extended to Applicant's representative during the telephone interview conducted on April 22, 2004. As requested by the Examiner, we are filing this Amendment in conjunction with a Request for Continued Examination.

Independent claims 11 and 22 are amended above to incorporate the subject matter of claims 12-16. Claims 12-16 are subsequently canceled without prejudice or disclaimer. No new matter is introduced, nor is another search needed since these amendments merely incorporate the subject matter of several dependent claims into one claim. Furthermore, these amendments to claims 11 and 22 (and cancellation of claims 12-16) reduce the number of issues on appeal. Entry and consideration are therefore requested

In the January 28, 2004 Office Action the Examiner has maintained the rejection of all pending claims 11-22 as obvious over Moberg WO 96/11572, German patent DE OS 3227126 and German patent DE OS 3229097. Essentially, the Examiner's assessment of this art is that it would have been obvious to combine the diol of Moberg in the combination composition of the German patents referenced by the applicant on page 4 of the specification, and further would be obvious to use the carboxylic acids and diols in a method of combating pathogenic organisms.

While we strongly disagree with the Examiner's evaluation of these three references, in order to advance this application to allowance we have amended independent claims 11 and 22 to incorporate the subject matter of claims 12-16 (now canceled). We believe this presents subject matter that is clearly allowable over the cited references. This combination of components from all of claims 12-16 is not described or suggested by any of the three references, alone or taken together.

For instance, the hydrotropic agents toluene sulfonate or cumene sulfonate as sodium or potassium salts, as defined in claims 11 and 22, are not mentioned in any of

Moberg, DE OS 3227126 or DE OS 3229097. The German references only teach surfactants, specifically alkylsulfonates or their salts—there is no suggestion whatsoever of arylsulfonates, alkylarylsulfonates or their salts. That is, the hydrotropic agents in our claimed compositions are particularly alkylarylsulfonate salts that are effective solubilizers. To that end, it is important to note that these alkylarylsulfonate salts differ from the surfactants of the claimed invention in that they do not have a primary chain length of $C_8 - C_{18}$. Consequently, the composition as presently claimed comprises both glycols and a hydrotropic agent. We believe that because of the inclusion of the glycols plus the hydrotropic agent (acting as a solubilizer), the carboxylic acids do not precipitate from the aqueous solution applied to plant—which leads to the surprising effect that plants were not damaged when contacted with our claimed compositions. This is in contrast to the German references, which do not maintain the carboxylic acids in solution.

These amendments to independent claims 11 and 22 are believed to overcome the obvious rejection.

We note the Examiner's comment on page 4 of the Office Action, that "two agents known to be useful in a method of combating microorganisms would be reasonably expected to be useful in combating pathogenic microorganisms regardless of the host." We respectfully submit that this statement is too sweeping, and it cannot be the case that someone having ordinary skill in this art would reasonably expect that the host of the microorganism is inconsequential to the effectiveness of a disinfectant. Just the fact that plant cell walls—which is where the disinfectant will first come into contact—are essentially different from mould cell walls and mammalian cell walls, is evidence of this. The Rule 132 Declaration submitted October 23, 2002 also provides evidence that disinfectants like those of the prior art are destructive to plants, even if they are otherwise useful to disinfect hard surfaces surrounding the plant.

Indeed, our own specification describes how the compositions of the two German patents DE OS 3227126 and DE OS 3229097, when applied to plants, results in damage to the plants. See our specification at page 2, lines 3-13, which specifically states that the compositions of these two references, when tested for plant compatibility, "regularly

resulted in a damaging of the test plants in the form of severe scorching, so that the use on plants appeared to be excluded.”

In summary, all of the Examiner’s outstanding rejections and objections have been addressed, and the application is believed to be in allowable form. Notice to that effect is earnestly solicited. No amendment made was related to the statutory requirements of patentability unless expressly stated herein, and no amendment made was for the purpose of narrowing the scope of any claim unless we argued above that such amendment was made to distinguish over a particular reference or combination of references.

If the Examiner has any questions or would like to make suggestions as to claim language, he is encouraged to contact Marlana K. Titus at (301) 977-7227.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marlana K. Titus', written in a cursive style.

Marlana K. Titus
Nash & Titus, LLC
Reg. No. 35,843

Nash & Titus, LLC
6005 Riggs Road
Laytonsville, MD 20882
(301) 977-7227